

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 6/4/2013	(3) CONTACT/PHONE Kerry Brown, Planner/ (805) 781-5713	
(4) SUBJECT Hearing to consider an appeal by Save the Park of the Planning Department Hearing Officer's approval of a request by the Morro Coast Audubon Society for a Minor Use Permit/Coastal Development Permit to establish public access improvements to the eastern portion of the Sweet Springs Nature Preserve located on the north side of Ramona Street between Broderson Avenue and 4th Street, Los Osos. District 2.			
(5) RECOMMENDED ACTION Adopt and instruct the Chairperson to sign the resolution denying the appeal and affirming the decision of the Planning Department Hearing Officer and conditionally approving the request by the Morro Coast Audubon Society (MCAS) for a Minor Use Permit to establish public access improvements to the eastern portion of Sweet Springs Nature Preserve.			
(6) FUNDING SOURCE(S) Department budget	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Hearing (Time Est. <u>75 minutes</u>) <input type="checkbox"/> Board Business (Time Est. <u> </u>)			
(11) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A Date: <u> </u>	
(17) ADMINISTRATIVE OFFICE REVIEW Reviewed by Leslie Brown			
(18) SUPERVISOR DISTRICT(S) District 2 -			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Kerry Brown, Planner

VIA: Ellen Carroll, Planning Manager/Environmental Coordinator

DATE: 6/4/2013

SUBJECT: Hearing to consider an appeal by Save the Park of the Planning Department Hearing Officer's approval of a request by the Morro Coast Audubon Society for a Minor Use Permit/Coastal Development Permit to establish public access improvements to the eastern portion of the Sweet Springs Nature Preserve located on the north side of Ramona Street between Broderson Avenue and 4th Street, Los Osos. District 2.

RECOMMENDATION

Adopt and instruct the Chairperson to sign the resolution denying the appeal and affirming the decision of the Planning Department Hearing Officer and conditionally approving the request by the Morro Coast Audubon Society (MCAS) for a Minor Use Permit to establish public access improvements to the eastern portion of Sweet Springs Nature Preserve.

DISCUSSION

Background

On March 15, 2013, the Planning Department Hearing Officer approved Minor Use Permit/Coastal Development Permit DRC2011-00013 by MCAS to establish public access improvements to the eastern portion of Sweet Springs Nature Preserve located on the north side of Ramona Street between Broderson Avenue and 4th Street, in the community of Los Osos.

Morro Coast Audubon Society owns and manages the Sweet Springs Nature Preserve. Sweet Springs is a 24 acre Nature Preserve which provides protected sensitive habitat, public access, educational programs, and monitoring and management of the flora and fauna at the site. In 2008, Sweet Springs East was purchased by the Trust for Public Land with funding for the acquisition provided by California State Coastal Conservancy, the National Coastal Wetlands Conservation Grant (USFWS), 2004 Section VI Recovery Land Acquisition Grant (USFWS), 2002 Section VI Recovery Land Acquisition Grant (USFWS), and the California Wildlife Conservation board. The Trust for Public Land transferred the property to the Morro Coast Audubon Society to manage with the Central Sweet Springs Preserve. Deed restrictions were placed on the property, restricting the use of the property to the following uses: plant and wildlife habitat preservation, restoration and management, wildlife-oriented education and research, and public access. Sweet Springs Nature Preserve is now made up of three areas: West Sweet Springs, Central Sweet Springs, and East Sweet Springs. West Sweet Springs is fully protected and public access is discouraged as it is a sensitive habitat (salt marsh), Central Sweet Springs allows managed public access and habitat preservation, and East Sweet Springs is proposed to allow public access and habitat enhancement and preservation consistent with the deed restrictions and the intent of the public agencies and groups that provided the purchase funds. Vegetation on the site includes non-native grassland, Eucalyptus woodland, emergent wetland, saltwater marsh, and coast live oak. Two drainages border the property on the east and west. MCAS initially proposed removal of approximately 100 Eucalyptus trees at the site. This portion of the project (tree removal) was removed for further study regarding potential impacts to Monarch butterflies and is not a part of the proposal being discussed today.

Project Description

MCAS is proposing to implement public access improvements at East Sweet Springs and connect the site (with trails) to the Central Sweet Springs Nature Preserve. The project includes an accessible trail and boardwalk system including interpretive elements guiding visitors to a prominent lookout point along the shoreline of the estuary. The trail will include one linear main line constructed of a combination of decomposed granite and elevated wooden or composite boardwalk (from the entrance to the bay overlook). Two spur trails leading from the Pond Loop trail to the north and south of the pond on the Central Sweet Springs preserve will connect the main line to the eastern section. One small loop trail will be included near the middle of the main line to provide a resting area. The main line trail will be five feet in width. The project also includes a bike rack (bicycles will not be allowed on the preserve), an ADA parking space, a small shed, and a 3,000 gallon water tank; all located at the entrance of the preserve.

MCAS has undertaken some restoration activities on the site, including the removal of invasive non-native species (e.g. veldt grass) and planting of native dune scrub species. The work has been limited to use of hand tools, and has been conducted under limitations and requirements from the U. S. Fish & Wildlife Service (USFWS).

The proposed project is consistent with all applicable Coastal Zone Land Use Ordinance (CZLUO) standards and Coastal Plan policies. Please refer to the March 15, 2013 Planning Department Hearing (PDH) staff report (Attachment 4) for more detailed project analysis.

Appeal Issues

On March 29, 2013, Save the Park filed an appeal of the Hearing Officer's decision. The appeal contends that the Department of Planning and Building did not adequately consider the entire project description as outlined by the applicant and analyze the impacts of all project features.

The specific appeal issues and staff's responses are provided below:

Appeal Issue #1:

A private activity supported by public funds is defined as a 'project' under California Environmental Quality Act (CEQA). All of MCAS's project (including clearance of ground cover) is supported by public funding therefore CEQA applies to all aspects of the project.

Staff Response: *MCAS's project description (submitted to the Planning Department in August 2011 and revised in March 2012) describes two major phases: access improvements and habitat restoration. Access improvements include an accessible trail and boardwalk system including interpretive elements guiding visitors to a prominent lookout point along the shoreline of the estuary. Habitat restoration activities focus on the eradication of veldt grass and the restoration of native dune scrub to benefit the Morro shoulderband snail, a federally listed endangered species.*

The Planning Department has determined that the ongoing restoration work – hand removal of non-native plants and replanting with natives does not require a land use permit, and therefore is not subject to CEQA review. A small water tank is proposed and will be used for the restoration activities to establish the plants. However once the plants are established the water tank will not be needed. There are other options available to water the plants, such as trucking water to the site.

The first test in determining if CEQA applies to an activity is to determine whether the activity is a "project" under CEQA. A "project" means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

- (a) an activity directly undertaken by any public agency;*
- (b) an activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies; or*

- (c) *an activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies (California Government Code section 21065).*

The second test is determining whether the project is ministerial or discretionary. In this case, hand removal of non-native plants and replanting with natives, the Planning Department determined that this portion of the project does not require a discretionary land use permit and therefore this portion of MCAS project description does not meet the second test and is not an action subject to CEQA.

Appeal Issue #2:

The “removal of approximately 3.5 acres of non-native plants including veldt grass, ice plant, mustard, wild radish, fennel, African daisy, English ivy and more” is subject to conformance with the Coastal Zone Land Use Ordinance and permit requirements.

Staff Response: *MCAS's project description (submitted to the County with the application) has outlined specific project features which do not require a permit or discretionary review by the County. These activities include restoration activities consisting of removal of non-native plants and planting natives over a 3.5 acre area of the site. Although not specifically expressed in MCAS's project description, the restoration activities are being accomplished by hand and are not related to developing the site. Although the project description states 3.5 acres of non-native plants will be removed, the restoration work is ongoing, and to date less than one acre has been removed and restored. Section 23.03.042 of the Coastal Zone Land Use includes “removal of the natural ground cover” as an action requiring a Minor Use Permit (or a Development Plan) if the area disturbed exceeds one acre. Section 23.03.042 determines permit requirements for types of land uses. The type of land use permit required to authorize a proposed land use is determined by Table 3-A. MCAS restoration activities are not considered a land use, and therefore these activities are not subject to Section 23.03.042. Because these activities are not subject to Section 23.03.042, Table 3A land use requirements are not applicable.*

The (non) application of this section is consistent with past interpretation regarding activities related to on-going maintenance and establishment of landscaped areas (depending on size). The County Planning Department has not required land use permits for landscaping and restoration work that is completed by hand and not associated with a land use.

OTHER AGENCY INVOLVEMENT/IMPACT

The project was reviewed by the Public Works Department, and referrals were sent to USFWS and the Coastal Commission. County Counsel reviewed and approved the Resolution as to form and legal effect. County Counsel also advised the Planning Department to add a condition of approval requiring indemnification (see Attachment 1, condition 20).

FINANCIAL CONSIDERATIONS

The required appeal fee was waived because the appeal involves a coastal issue as the issue of appeal. In order to exhaust local appeals the County cannot charge a fee for the processing of an appeal on a coastal development project per the requirements of the Coastal Zone Land Use Ordinance and the Coastal Act. The cost of processing this appeal (total cost is approximately \$4,435) comes from the Department's General Fund support.

RESULTS

Denying the appeal and upholding the Planning Department Hearing Officer's decision would result in the conditional approval of Minor Use Permit to implement public access improvements at this location.

ATTACHMENTS

1. Board Resolution Affirming the Hearing Officer's Decision
2. Appeal form (Save the Park; March 29, 2013)
3. Planning Department Hearing minutes (March 15, 2013)
4. Planning Department Hearing staff report (March 15, 2013)
5. General Correspondence received
6. Petition Against Removal of Eucalyptus trees